

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RUDY B. MEOLI JR. and ARMANDO PADILLA

Appeal No. 98-0972
Application No. 08/609,550¹

ON BRIEF

Before McCANDLISH, ABRAMS and STAAB, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹Application for patent filed March 1, 1996.

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Application No. 08/609,550

This is an appeal from the decision of the examiner finally rejecting claims 1-22, which constitute all of the claims of record in the application.

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The appellants' invention is directed to a hammock.
The subject matter before us on appeal is illustrated by
reference to claim 1, which has been reproduced in an appendix
to the Brief (Paper No. 8).

THE REFERENCES

The references relied upon by the examiner to support the
final rejection are:

Nickerson	369,546	Sep. 6, 1887
Palmer	468,576	Feb. 9, 1892
Lloyd	631,747	Aug. 22, 1899
Austrian patent (Haase)	49,143	Jul. 1911

THE REJECTIONS

Claims 21 and 22 stand provisionally rejected under the
judicially created doctrine of obviousness-type double
patenting over claims 20 and 21 of copending Application
Serial No. 08/609,551.

Claims 1 and 3-10 stand rejected under 35 U.S.C. § 103 as
being unpatentable over Haase in view of Palmer and Lloyd.

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Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Haase in view of Palmer, Lloyd and Nickerson.

Claims 11, 12 and 14-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Haase in view of Lloyd.

Claims 13 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Haase in view of Lloyd and Palmer.

The rejections are explained in Paper No. 4 (the final rejection).²

The appellants' arguments are set forth in the Brief.

OPINION

The Double Patenting Rejection

No terminal disclaimer has been filed, and no arguments have been made disputing the examiner's position with regard to this rejection. We therefore shall sustain it.

The Rejections Under 35 U.S.C. § 103

²A rejection of claims 21 and 22 under 35 U.S.C. § 112, second paragraph, also was listed in the Answer. However, according to Paper No. 7, this rejection was overcome by the amendment filed April 29, 1997 (Paper No. 6). We therefore shall consider it as having been withdrawn.

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The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a *prima facie* case of obviousness under 35 USC § 103, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (BPAI 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellants' disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988).

Independent claim 1 stands rejected as being unpatentable over Haase in view of Palmer and Lloyd. This claim is directed to the combination of a body supporting member and a pair of spreader bars positioned at opposite ends thereof.

The examiner finds in Haase all of the subject matter recited in this claim except for the spreader bars being split into upper and lower bar members, and being "curved horizontally and longitudinally relative to said body supporting member."³ It is the examiner's position, however, that it would have been obvious to one of ordinary skill in the art to split each of the spreader bars of Haase in view of the teaching of Palmer, and to alter the curve of those bars to that required by the claim, in view of the teaching of Lloyd.

Lloyd discloses a wire mesh hammock having a spreader bar (9) that functions to "extend the hammock at each end" (page 2, line 29). Each is described as "a flexible spreader, preferably a flat spring or steel strip," which is "secured to the edges of the hammock" by clips (page 2, line 28 et seq.). As shown in Figure 1 of the Lloyd drawings, the spreader bar is curved "horizontally and longitudinally," as is required by claim 1. However, the mere fact that the prior art structure could be modified does not make such a modification obvious

³In light of the description of the spreader bars provided in the specification, we interpret the language regarding curvature to mean that the spreader bar is "flat" when viewed from its ends, as shown in Figure 3, for example.

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unless the prior art suggests the desirability of doing so.
See *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed.
Cir. 1984).

Here, we fail to perceive any teaching, suggestion or
incentive in any of the three references cited against claim 1
which would have led one of ordinary skill in the art to
modify the Haase spreader bars in the manner proposed by the
examiner, inasmuch as the function of extending the hammock at
each end already is being performed by Haase's vertically
curved spreader bars. Why, then, would one of ordinary skill
in the art have been motivated to make such a change, which
simply would result in a different curvature being imparted to
the spreader bar without any apparent change or improvement in
function. Our reviewing court stated in *In re Fritch*, 972
F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992):

It is impermissible to use the claimed invention as
an instruction manual or "template" to piece
together the teachings of the prior art so that the
claimed invention is rendered obvious. This court
has previously stated that "[o]ne cannot use
hindsight reconstruction to pick and choose among
isolated disclosures in the prior art to deprecate
the claimed invention" (citations omitted).

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It is our view that the only suggestion for the proposed change is found in the hindsight accorded one who first viewed the appellants' disclosure, and therefore a *prima facie* case of obviousness has not been established by the applied references. In view of this, we will not sustain the rejection of claim 1 or, it follows, of claims 3-10, which depend therefrom.

Claim 2 also depends from claim 1. It stands rejected on the basis of the same three references, taken further with Nickerson, which was cited for its teaching regarding the use of apertures and channels. Nickerson fails to alleviate the deficiency discussed above, however, and therefore we also will not sustain the rejection of claim 2.

Haase in view of Lloyd forms the basis for the examiner's rejection of independent claim 11. This claim contains the same requirement regarding the curvature of the spreader bars as was present in claim 1, and we reach the same conclusion with regard to the outcome: A *prima facie* case of obviousness is not established by the teachings of these two references,

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and we will not sustain the rejection. The same is true with regard to dependent claims 12 and 14-19.

Claims 13 and 20 also depend from claim 11, and they stand rejected as being unpatentable over Haase, Lloyd and Palmer. Palmer discloses spreader bars having the same vertical curvature that is present in Haase, and therefore it fails to cure the deficiency discussed above with regard to claim 1. Again, a *prima facie* case of obviousness has not been established, and the rejection of these claims will not be sustained.

SUMMARY

The provisional rejection of claims 21 and 22 under the judicially created doctrine of obviousness-type double patenting is sustained.

None of the rejections under 35 U.S.C. § 103 are sustained.

The decision of the examiner is affirmed-in-part.

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No period for taking any subsequent action in connection
with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

HARRISON E. McCANDLISH, Senior)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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